

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22480 OF 2005

DATED: 06-03-2006

Between:

M/s. Japson Estates Private Limited,

Represented by its Managing Director,

Smt. N. Padmaja Devi, R/o.10-3-310,

Humayun Nagar, Masab Tank, Hyderabad. .. Petitioner

And

1. Commissioner of Prohibition & Excise,
Government of A.P., Opp. Gandhi Bhavan,
Hyderabad.
2. G. Srikant, S/o. Dayanand, aged 25 years,
Occ. Business, r/o.18-5-601, Laldarwaza,
Hyderabad. .. Respondents

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ORDER :

The petitioner claims to be the owner of the premises bearing Nos.228 to 232, II floor, 6-3-1110, Amrutha Mall, Begumpet, Hyderabad. It is not in dispute that the premises was leased out in favour of the 2nd respondent vide Lease Deed dated 30-04-2001 wherein he has been running a Bar-cum-Restaurant in the name and style of 'Hunt Pub'. The petitioner states that the lease in favour of the 2nd respondent was only for a period of one year. However, the 2nd respondent who has been a chronic defaulter in payment of rents, and also acted in violation of other clauses contained in the Lease Deed, has been claiming that the lease is for a period of six (6) years and it is also renewable for a further period. He also filed O.S.No.588 of 2005 on the file of the Court of the II-Senior Civil Judge, City Civil Court, Hyderabad seeking an injunction restraining the petitioner from interfering with his possession in respect of the property in question. In the said suit, he filed I.A.No.933 of 2005 seeking temporary injunction in which the writ petitioner filed a counter contending that there is no cause of action for the suit.

While so, when the 2nd respondent made an application dated 24-6-2005 for the year 2005-06 for grant of a Bar Licence in Form-B2 and the same was under consideration by the 1st respondent – Commissioner of Prohibition & Excise, the writ petitioner filed an objection petition opposing grant of licence to run the Bar in the premises in question. That apart, the petitioner also filed W.P.No.19450 of 2005

which was disposed of by this Court by order dated 2-9-2005 with a direction to the 1st respondent to take appropriate action on the objection petition filed by the petitioner in accordance with law. In pursuance thereof, the writ petitioner submitted a fresh objection petition dated 6-9-2005. However, the 1st respondent by order dated 5-10-2005 overruled the objections raised by the petitioner observing that under the Lease Deed the period of lease was fixed for six (6) years, renewable by mutual consent and since the lease is still subsisting, there is no reason to discontinue the Bar.

Aggrieved by the said order, the present writ petition is filed contending inter alia that the 2nd respondent who is not possessing a licence by the local authority to serve food as a restaurant is not entitled to a Bar Licence under A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Rules'). It is also contended that as per Rule 6 (1) (i) (f), a licence shall not be granted unless the premises has adequate vehicle parking arrangements, however since the premises in question has no such facility, the 1st respondent ought not to have granted the licence. That apart, since there is no valid lease deed in respect of the premises in question, the 2nd respondent is not entitled for a licence as provided under Rule 6 (1) (vi) of the Rules. It is also alleged that the 2nd respondent has been running the business in violation of Rules 30 and 33 of the Rules and therefore the 1st respondent ought to have rejected the application of the 2nd respondent in limini.

The learned Counsel for the writ petitioner vehemently contended that none of the above stated objections which were specified in the objection petition filed by the petitioner in pursuance of the order of this Court in W.P. No.19450 of 2005 was considered by the 1st respondent before passing the impugned order and therefore on that ground alone the order is liable to be set aside.

In the counter-affidavit filed on behalf of the 1st respondent, it is stated that the objection petition filed by the petitioner was duly enquired into by the Prohibition & Excise Superintendent, Hyderabad and Deputy Commissioner of Prohibition & Excise, Hyderabad, who recommended grant of Bar Licence in favour of the 2nd

respondent. While the matter was under consideration, the petitioner filed W.P.No.19450 of 2005 and in pursuance of the order in the said writ petition the writ petitioner filed a fresh application dated 6-9-2005. The main objection raised by the petitioner was that there was no valid lease agreement which was considered with reference to the documents and the statutory rules and having found that the period of lease was fixed for six (6) years extendable by mutual consent thereafter, the impugned order dated 5-10-2005 was passed. It is also stated that the licence was issued only after verification and after being satisfied about the adequacy of parking place as required under rule 6 (i) (f) of the Rules and therefore the same does not warrant any interference.

The 2nd respondent filed a separate counter-affidavit on the same lines.

I have heard the learned Counsel for both the parties.

A perusal of the petition filed by the petitioner in pursuance of the order of this Court in W.P.No.19450 of 2005 shows that apart from the objection that there is no valid lease between the petitioner and the 2nd respondent, the petitioner also raised various other objections.

It is not in dispute that under the A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 made under G.O.Ms.No.997, dated 24-05-2005 in exercise of the powers conferred by Section 72 of the A.P. Excise Act, 1968 (for short, 'the Act'), a licence in Form –2B shall not be granted unless the premises has satisfied the requirements as specified under Rule-6 of the Rules. The adequate vehicle parking arrangement is one of the requirements to be satisfied under Rule-6 of the Rules. Though in the counter-affidavit filed on behalf of the 1st respondent, it is stated that the licence was issued only after being satisfied about the adequate parking as required under the Rules, the learned Counsel for the petitioner disputes the same and contends that the parking space available for the entire building which includes a number of shopping complexes and a restaurant is not sufficient to accommodate not more than eight (8) cars. The learned Counsel also contends that the licence was granted in favour of the 2nd respondent without

application of mind to the said factor and the impugned order itself shows that the objection raised by the petitioner to that effect was not considered.

On a perusal of the impugned order, dated 5-10-2005, it appears that the only aspect considered by the 1st respondent was with regard to the objection raised by the petitioner that there was no valid lease in respect of the premises in question. The said objection was rejected observing that the dispute is of a civil nature which is pending in the Court of law. The impugned order does not reflect consideration of the other objections raised by the petitioner.

The record placed before this Court by the learned Government Pleader also does not contain any material to show that there was adequate parking place for the premises in question. The report of the Prohibition & Excise Superintendent, Hyderabad, dated 6-8-2005 contains only a single sentence that 'the applicant has also provided adequate parking place in the complex'. In the light of the specific objections raised by the petitioner, the 1st respondent while considering the representation of the petitioner in pursuance of the orders of this Court in W.P.No.19450 of 2005 ought to have considered all the objections and ought to have recorded clear findings on the objections raised by the petitioner. The impugned order does not reflect the application of mind to the other objections except the objection with regard to the validity of the lease in respect of the premises in question. The record also does not reflect consideration of the other objections raised by the petitioner particularly the objection with regard to the non-availability of the adequate parking place.

In the circumstances, the impugned order dated 5-10-2005 is set aside and the writ petition is disposed of with a direction to the 1st respondent to consider the objections raised by the petitioner afresh and to pass appropriate orders in accordance with law, as expeditiously as possible preferably within a period of six (6) weeks from the date of receipt of this order.

However, keeping in view the fact that the 2nd respondent has already

granted the licence for the year 2005-06 and has been carrying on the business, without disturbing the said licence, it is made clear that the licence so granted shall be reviewed in case the allegations raised by the petitioner are found to be established in the enquiry to be conducted by the 1st respondent in pursuance of this order.

Writ Petition is accordingly disposed of. No costs.

G. ROHINI, J.

Dt. 06-03-2006

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